ESTTA Tracking number: ESTTA1012718

Filing date: 10/31/2019

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91246567
Party	Defendant Phantom I.P., LLC
Correspondence Address	ROBYN R GALLITTO LEGAL DEPARTMENT 2445 BELMONT AVENUE YOUNGSTOWN, OH 44505-2405 UNITED STATES RGallitto@fireworks.com, waweimer@fireworks.com 330-746-1046
Submission	Other Motions/Papers
Filer's Name	Robyn R. Gallitto
Filer's email	RGallitto@fireworks.com, WAWeimer@fireworks.com
Signature	/Robyn R. Gallitto/
Date	10/31/2019
Attachments	2019 10-31 Motion to Amend filing classification.pdf(99476 bytes )

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DYNOMITE WHOLESALE, LLC

Plaintiff,

v. : Opposition: # 91246567

PHANTOM I.P., LLC

Defendant

## MOTION TO AMEND FILING CLASS DESCRIPTION

NOW COMES Phantom I.P., LLC ("Defendant," "Applicant," or "Phantom"), a Delaware limited liability company with its principal office located in Youngstown, Ohio, with this Motion to Amend the Filing Class Description and in support thereof, offers the following:

- Defendant Phantom originally filed its application at serial number 88/049,710 for its mark "Air Assault" under the general international class number of "013 fireworks."
- 2. Opposer claims a common law right in the mark "Air Assault" for certain fireworks" but has not filed for registration with the U.S. Patent and Trademark Office.
- In the course of these proceedings sub judice, the parties have reached an amicable resolution wherein each party's use of the mark "Air Assault" can co-exist under certain terms.
- In order to effectuate the terms of the resolution, Defendant Phantom must amend its filing classification to more specifically reflect the goods associated with the mark and to reflect certain terms of the agreement, that is, amend the original filing class from "013 fireworks" to "013 fireworks, namely, fireworks limited to helicopters/aerial spinners."
- 5. Plaintiff Opposer Dynomite Wholesale, LLC is not opposed to this motion.

WHEREFORE, the Defendant, Phantom I.P., LLC respectfully requests that its Motion to Amend Filing Class Description to reflect "Class 013 fireworks, namely fireworks limited to helicopter/aerial spinner" be granted.

Respectfully submitted,

Phantom I.P., LLC

Date: October 31, 2019

By: Robyn/R. Gallitto, Esq.

William A. Weimer, Esq.

Attorneys for Defendant, Phantom I.P., LLC

2445 Belmont Avenue

Youngstown, OH 44505-2405

Phone: (330) 746-1046

Emails: RGallitto@fireworks.com

WAWeimer@fireworks.com

## **Proof of Service**

I hereby certify that a true and complete copy of the foregoing Motion to Amend Filing Classification has been served on Glenn K. Robbins, II, Esq., of Spence Fane, LLP, 1 North Brentwood Blvd., Suite 1000, St. Louis, MO 63105, by forwarding said copy on October 31, 2019, via email to sfaction@spencerfane.com and to grobbins@spencerfane.com.

Robyn R. Gallitto, Esq.

Attorney for Defendant, Phantom I.P., LLC

2445 Belmont Avenue

Youngstown, OH 44505-2405

Phone: (330) 746-1046

Email: RGallitto@fireworks.com